

## REMARKS

On August 8, 2006, Applicants filed a Letter To the Examiner requesting withdrawal of the finality of the current Action as being incomplete. To date, a response had not been received regarding the request. Accordingly, Applicants file this response to the current Action.

Claims 1, 7, 13, and 19 are amended herein. No new matter is presented in any of the foregoing and, accordingly, approval and entry of the amended claims are respectfully requested.

Claims 1-19 are pending and under consideration.

### **Entry of Amendment under 37 CFR §1.116**

Applicant requests entry of this Rule 116 Response because it is believed that the amendment of claims 1, 7, 13, and 19 puts this application into condition for allowance and should not entail any further search by the Examiner since no new features are being added.

Claim 1 is amended herein to address the formalities and Examiner's concerns and to clarify a method includes "a processing to receive packet data that may include the particular packet data, . . . without judging whether or not said received packet data includes the registered particular packet." Claims 7 and 13 are similarly amended.

Claim 19 is amended herein to address the formalities and Examiner's concerns and to clarify a method includes "charging a destination user for received packet data, which may include particular packet data, regardless of whether the particular packet data was included in the received packet data."

### **Item 3: Rejection of claims 1, 7, 13, and 19 under 35 U.S.C. §112, second paragraph**

In item 3 of the Office Action, the Examiner rejects claims 1, 7, 13 and 19 under 35 U.S.C. §112, second paragraph as indefinite. The Examiner contends claims 1, 7, and 13 are indefinite because:

they create confusion distinguishing between a "particular packet data" and a "packet data". The Examiner does not know if the receive(d) "packet data" is the "particular packet data" or another "packet data".

(Action at page 2).

The Examiner contends claim 19 is indefinite because:

it recites "regardless of particular packet data" then it said (says) "the particular packet data". The claim does not clearly teach what is "the particular packet data".

(Action at page 3).

Claim 1 is amended herein to address the Examiner's concerns and to clarify a method includes "a processing to receive packet data that may include the particular packet data, . . .

without judging whether or not said received packet data includes the registered particular packet." Claims 7 and 13 are similarly amended.

Claim 19 is amended herein to address the Examiner's concerns and to clarify a method includes "charging a destination user for received packet data, which may include particular packet data, regardless of whether the particular packet data was included in the received packet data."

Applicants submit that claims 1, 7, 13 and 19, all as amended herein, are definite and comply with 35 U.S.C. §112, second paragraph and request withdrawal of the rejection.

**Items 4-5: Rejection of claims 1-19 under 35 U.S.C. §103(a)**

In items 4-5, the Examiner rejects claims 1-3, 5-9, 11-15 and 17-19 under 35 U.S.C. §103(a) as being unpatentable over Meuronen (U.S. 6,473,622) and rejects claims 4, 10, and 16 under 35 U.S.C. §103(a) as being unpatentable over Meuronen in view of Jacobs (U.S. 2004/0039784).

Applicants bring to the attention of the Examiner that page 6 of the Detailed Action cites "Goldhaber" without further information regarding the reference. Applicants representative contacted the Examiner for clarification of the same, but have not yet received a reply. Accordingly, this response assumes that the Action's citation to "Goldhaber" is an error and fully responds to the rejection of claims 4, 10, and 16 under 35 U.S.C. §103(a) as being unpatentable over Meuronen in view of Jacobs.

The rejections are traversed.

Independent claim 1, as amended herein, recites a method for transferring a communication fee including "registering into a transmitting information storage device, information regarding destination users, a sender, and particular packet data to be sent; when a terminal of said destination user registered in said transmitting information storage device performs a processing to receive packet data that may include the particular packet data, charging said destination user for said received packet data, wherein said charging said destination user is carried out without judging whether or not said received packet data includes the registered particular packet; and transferring the communication fee, charged to said destination users for said particular packet data, to said sender registered in said transmitting information storage device, by using a receiving status data for said particular packet data to be received by said terminals of said destination users registered in said transmitting information storage device, wherein a number of packets of said particular packet data is calculated from said particular packet data stored in said transmitting information storage device, and an amount

of the transferred communication fee is calculated by using a number of destination users specified by said receiving status data, and said number of packets of said particular packet data." Independent claims 7 and 13, both as amended herein, have similar recitations.

Independent claim 19, as amended herein, recites a method for transferring a communication fee, including "charging a destination user for received packet data, which may include particular packet data, regardless of whether the particular packet data was included in the received packet data; and transferring a communication fee charged to the destination user for the particular packet data to a sender registered in a transmitting information storage device by using a receiving status data for said particular packet data to be received, wherein a number of packets of the particular packet data is calculated from the particular packet data stored in the transmitting information storage device, and an amount of the transferred communication fee is calculated by using a number of destination users specified by the receiving status data, and the number of packets of said particular packet data."

Applicants submit that the cited art, alone or in combination, does not teach features recited by each of the independent claims and *prima facie* obviousness has not been established by the Examiner.

### **Examiner Errs In Interpretations of Cited Art and Logic In Support Of Rejections**

#### **"Packet data" Not Taught By Cited Art**

According to the present invention, using claim 1 as an example, processing includes receiving "packet data that may include the particular packet data, charging said destination user for said received packet data, wherein said charging said destination user is carried out without judging whether or not said received packet data includes the registered particular packet (emphasis added)."

Applicants submit that none of the cited art, alone or in combination, teach such packet data, let alone packet data including particular packet data.

When ads are sent by an abort message in Meuronen, for example, packets for the ads, are not generated. That is, merely because packet data can include advertisements does not teach that advertisements are packets.

In item 6 of the Office Action, entitled Response to Arguments, the Examiner states:

if Applicant's specification page 4, paragraph 2 teaches that "particular packet data includes advertisements" then an advertisement can be properly be constructed to be a "particular packet data". Therefore, Meuronen teaches "packet data", as defined by Applicant's specification. The Applicant argues that Meuronen does not teach a packet as defined by the NIHnet handbook. The Examiner answers that Meuronen teaches a packet as

defined by Applicant's specification page 4, paragraph 2.

(Action at page 7).

Applicants submit that Meuronen does not teach packets as understood by one of ordinary skill in the art and that the Examiner continues to err both in his interpretation of the cited art and in his logic in support of the rejection.

As an illustration of the same, Applicants replace the phrase "packet data" with "automobile" and the item "advertisements" with "wheels." Using the Examiner's logic, Applicants submit in such a replacement, the Examiner is in effect arguing:

if Applicant's specification teaches . . . that "automobile includes a wheel" then a "wheel" can be properly be constructed to be a "automobile".

That is, the Examiner illogically concludes that since Meuronen teaches "wheels" (advertisements) that Meuronen teaches an "automobile" (packet data).

Applicants points out that as understood by one of ordinary skill in the art a packet may be defined as "a short, fixed-length section of data that is transmitted as a unit in an electronic communications network." (See, for example, NIHnet Handbook Glossary at <http://www.cit.nih.gov/dnst/handbook/Main/glossary.htm#P>). That is, while a short, fixed-length section of data can contain data that includes advertisement data, it does not necessarily follow that an advertisement is a short, fixed-length section of data transmitted as a unit.

**"Charging. . . without judging whether . . . received packet data includes the registered particular packet" Not Taught By Cited Art**

Applicants submit that none of the cited art teaches a "charging. . . without judging whether . . . received packet data includes the registered particular packet." Since transmission bit rates may be different, a billing system that charges based on a number of connections does not teach a charging based on a number of packets.

The Examiner incorrectly contends that:

Applicant's specification defines packets as advertisements. . . and Meuronen teaches billing advertisers for the number of ads transmitted to subscribers . . . Therefore, Meuronen teaches charging based on a number of packets.

(Action at page 8).

Applicants submit that the Examiner is incorrect since the Applicants' specification does not define "packets as advertisements."

**Fee "calculated by using a number of destination users" Not Taught By Cited Art**

Applicants submit that the cited art does not teach a fee amount calculated by a "number of destination users specified by said receiving status data."

The Examiner errs in his interpretation of Meuronen and contends that since Meuronen

teaches:

billing subscribers for received packet data. Therefore, Meuronen teaches number of destination users which are the subscribers.

(Action at page 8).

However, Meuronen does not teach in the lines cited "billing subscribers for received packet data."

Further, even if the Examiner's contention is *arguendo* correct, merely teaching billing subscribers for received packet data does not teach a number of destination users specified by said receiving status data, as recited by claim 1, for example.

**Registering ALL of information regarding destination users, a sender, and particular packet data to be sent Not Taught By Cited Art**

Applicants submit that the cited art does not teach "registering into a transmitting information storage device, information regarding (1) destination users, (2) a sender, and (3) particular packet data to be sent (emphasis added)."

The Examiner contends this registering is taught by Meuronen citing column 7, lines 13-23. In Response to Arguments, the Examiner contends

it is inherent that to bill an advertiser that sends an ad to a subscriber, said advertiser needs to be registered with the system and also is inherent that for an advertisement to be prepared to be received by a subscriber, said advertisement needs to be registered in the Meuronen system for said ad to be transmitted to said subscriber.

(Action at page 8).

However, Applicants submit that the Examiner is incorrect in that Meuronen does not discuss, in the lines cited, or anywhere else such a registering of all of (1), (2), and (3). Further, Applicants submit that the Examiner has not properly supported the contended inherency, and request proper support for the same or the rejection be withdrawn.

**Features Recited By Dependent Claims Not Taught By Cited Art**

Further, features recited by dependent claims are separately not taught by the cited art.

**I. Claim 2**

Dependent claim 2 recites a method "charging said sender for said particular packet data when said particular packet data is transmitted to the destination users registered in said transmitting information storage device (emphasis added)."

In support of the rejection of claim 2, the Examiner contends Meuronen teaches that the sender or advertiser is charged for transmitting ads to a subscriber. (Action at page 9).

Applicants submit that even given *arguendo* that Examiner's contention, Meuronen does

not teach charging a sender based on a condition of "when said particular packet data is transmitted to the destination users registered (emphasis added)."

As another example, dependent claim 3 recites a method "registering information regarding said sender and said particular packet data to be sent into said transmitting information storage device; and registering information regarding said destination users into said transmitting information storage device." In support of the rejection of claim 3, the Examiner cites Meuronen col. 3, lines 35-42, and col. 7, lines 13-24. However, Meuronen does not teach any registration in the cited portion.

## II. Claims 4, 10, and 16

Dependent claims 4, 10, and 16 recite, using claim 4 as an example, "registering information regarding said destination users includes registering information regarding said destination user that is acquired when a terminal of said destination user requests said particular packet data."

Neither Meuronen nor Jacobs teach a billing system of transmitted data based on destination user requests of "particular packet data" or for transferring the communication fee of the Web page data to the sender.

The Examiner contends that Meuronen teaches billing advertisers and/or subscribers for ads received by said subscribers. (Action at page 9)

Applicants submit that even *arguendo* given the Examiner's contention is correct that an ad teaches a packet, Meuronen does not teach a billing system based on a "particular" ad nor for transferring the communication fee of the Web page data to the sender.

Applicants also point out that if the citation of "Goldhaber" refers to Goldhaber (U.S.P. 5,855,008) that Goldhaber does not teach compensating a receiving fee of the Web page data. Rather, Goldhaber teaches compensating a paying attention to an ad when receiving fee and the transmission fee of the Web page data are free, the compensation is carried out. and does not support the Examiner's argument.

## Summary

Since features recited by claims 1-19 are not taught by the cited art, alone or in combination, and *prima facie* obviousness is not established, the rejections should be withdrawn and claims 1-19 allowed.

## Action Incomplete

In support of the rejection of claims 1-3, 5-9, 11-15 and 17-19, the Examiner states:

[T]he bigger the number of messages sent by said advertisers that are

relayed by an operator and received directly by said destination users, the more said advertisers (i.e. sender) would have to pay to cover the expenses of said distribution.

(Action at page 5).

This statement was also made by the Examiner in the previous Office Action mailed December 6, 2005. Applicants filed an Amendment on March 6, 2006 traversing the rejections of the previous Office Action and demanded the Examiner produce authority for the statement and/or an affidavit to support the Examiner's assertion if the Examiner also based the rejection, at least in part, on personal knowledge, as required under 37 C.F.R. § 1.104(d)(2).

However, in the current Action, the Examiner has not provided support of this repeated statement nor provided an affidavit to support the assertion.

Accordingly, Applicants respectfully submit that the finality of the current Action is premature since the current Action is incomplete and respectfully request the withdrawal of the finality of the current Office Action and a new Office Action issued providing the required support and having the response date reset.

#### **CONCLUSION**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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